

**REMARKS/ARGUMENTS**

**I. Claim Rejections Under 35 U.S.C. § 102**

The Examiner has rejected claims 14, 16-17 and 19 under 35 U.S.C. 102(b) as allegedly anticipated by Haward (U.S. patent No. 6,071,535). Applicants have amended claim 14 to include the limitations of claim 20. Accordingly, the rejection should be withdrawn.

**II. Claim Rejections Under 35 U.S.C. § 103**

*a. The Rejection Over Hayward*

The Examiner has rejected claims 37-39 under 35 U.S.C. 103 as allegedly unpatentable in view of Hayward. Applicants have amended claim 14 to include the limitations of claim 20. Accordingly, the rejection should be withdrawn.

*b. The Rejection over WO 95/23578 in combination with Dodd or Schueller*

The Examiner has rejected claims 14-19, 23 and 34-41 over WO 95/23578 in combination with Dodd (U.S. Patent No. 5,674,478) or Schueller (U.S. Patent No. 5,306,434). WO 95/23578 in combination with Dodd or Schueller. Applicants have amended claim 14 to include the limitations of claim 20. Accordingly, the rejection should be withdrawn.

*c. The Rejection over Mathur in combination with Dodd or Schueller*

The Examiner has rejected claims 14-23 and 34-44 as allegedly unpatentable over Mathur (U.S. Patent No. 5,643,600) in combination with Dodd or Schueller. Applicants respectfully traverse this rejection.

Mathur relates to oil-filled paucilamellar lipid vesicle containing at least one non-phospholipid amphiphile as the primary lipid of the vesicle bilayers and avocado oil unsaponifiables. Mathur specifically teaches the drawbacks of using cholesterol in lipid vesicles. See col. 2 lines 34-36. Indeed, the object of Mathur's invention appears to be finding a substitute for sterols. See col. 2, lines 26-59. The Examiner points to Examples 1, 2 and 5 for support that Mathur discloses hair-conditioning compositions containing lipid vesicles, cholesterol and sodium lauryl sulfate. Applicants note, however, that Example 1, vehicle D, is the only formulation containing a sterol, i.e., cholesterol. Mathur specifically teaches that vehicle D was not as homogenous as vehicle A which did not contain cholesterol. Accordingly,

one of ordinary skill in the art would not have found it obvious from the teachings of Mathur to incorporate a sterol such as cholesterol into the lipid vesicle of Mathur.

Further, there is no teaching or suggestion in Mathur of a composition comprising a conditioning polymer encapsulated in a lipid vesicle wherein said lipid vesicle comprises a mixture of a dual chain lipid which is a glyceryl diester, an alkoxylated amine, or a mixture thereof and a single chain lipid which is a glyceryl monoester, a polyoxyethylene fatty ether, or a mixture thereof. Accordingly, the rejection should be withdrawn.

*d. The Rejection over WO 95/23578 in combination with Dodd, Schueller and Mathur.*

The Examiner has rejected claims 20-22 and 42-44 as allegedly unpatentable over WO 95/23578 in combination with Dodd, Schueller and Mathur. Applicants respectfully traverse this rejection.

WO 95/23579 relates to a process for the deposition of an active ingredient on the hair by cationic liposomes. The active ingredient is taught to include sunscreens, antidandruff agents, vitamin E and derivatives thereof, volatile oils and perfumes. There is no teaching or suggestion of a conditioner as an active ingredient. Further, there is no teaching or suggestion of a lipid vesicle comprising a mixture of a dual chain lipid which is a glyceryl diester, an alkoxylated amine, or a mixture thereof and a single chain lipid which is a glyceryl monoester, a polyoxyethylene fatty ether, or a mixture thereof. The Examiner recognizes that WO 95/23579 fails to teach the presence of dual chain lipid and relies upon Mathur.

According to the Examiner it would have been obvious to one of ordinary skill in the art to modify the teachings of WO 95/23579 to include a dual chain lipid since "Mathur shows that these dual chain lipids have also the ability to form lipid vesicles." Applicants respectfully disagree. The mere fact that references can be combined does not make the combination prima facie obvious unless there is some motivation provided in prior art to make the modification. Here, there is nothing in the teachings of Mathur that would provide one of ordinary skill in the art with the motivation to modify the compositions of WO 95/23579 to include a dual chain lipid. Indeed, WO 95/12579 relates to deposition of an active ingredient on the by cationic liposomes. In contrast, Mathur relates to oil-filled paucilamellar lipid vesicle containing at least one non-phospholipid amphiphile as the primary lipid of the vesicle bilayers and avocado oil unsaponifiables. Mathur specifically teaches the

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drawbacks of cholesterol, i.e., an undesirable ingredient for use in most edible and pharmaceutical preparations. One of ordinary skill in the art would not have been motivated to incorporate the non-phospholipid amphiphile lipid and avocado oil unsaponifiables into the compositions taught by WO 95/12579 especially since WO 95/12579 teaches the inclusion of cholesterol and Mathur is specifically directed to finding a substitute for cholesterol. Accordingly, Applicants respectfully request withdrawal of this rejection.

### **III. Conclusion**

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/J&J2047USDIV/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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